

## **FAMILY SECURITY TRUST FUND**

In addition to the renewal fee, all funeral establishment owners must also include a remittance of \$375.00 for each funeral establishment, restricted establishment, and funeral service business. The \$375.00 will be deposited into a special, interest-bearing, account titled The Family Security Trust Fund (FSTF). The fee of \$375.00 will be assessed yearly until The Family Security Trust Fund has accumulated a balance of \$1,000.000. Beginning January 1, 2010, monies from this FSTF will be used to aid victims of Preneed theft.

This law (see HB1090) was enacted in July, 2008. As per the law, a funeral establishment's license will not be renewed unless it remits the additional \$375.00 fee. Should you have questions, please contact the Board Office at 410-764-4792.

NOTE: Unless you are a new establishment applying for an initial license, no fees are due at this time, as the FSTF has reached its ceiling.

## Statute Text

### Article - Health Occupations

#### §7-4A-03.

- (a) There is a Family Security Trust Fund.
- (b) The Board shall:
  - (1) Administer the Fund; and
  - (2) Over a reasonable period of time, build the Fund to a level of \$1,000,000 and thereafter maintain the Fund at that level.
- (c) The Fund is a special, non-lapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.
- (d) (1) The Board shall deposit all money collected to the credit of the Fund with the State Treasurer for placement into a special account.
  - (2) (i) The State Treasurer may invest or reinvest money in the Fund in the same manner as money in the State Retirement and Pension System.
  - (ii) The investment earnings shall be:
    - 1. Except as provided in paragraph (3) of this subsection, credited to the Fund; and
    - 2. Available for the same purposes as the money deposited into the Fund.
  - (3) If the level of the Fund exceeds \$1,000,000, the State Treasurer shall pay the investment earnings of the Fund into the General Fund of the State.
- (e) The Fund is not liable for any other expenses or obligations of the Board.
- (f) (1) Accounting and financial reports related to the Fund shall be publicly available in a timely manner.
  - (2) The Legislative Auditor shall audit the accounts and transactions of the Fund as provided in § 2-1220 of the State Government Article.
- (g) (1) The Board may retain the services of appropriate experts or service providers to advise about, or administer, the Fund.
  - (2) The costs of the services described in paragraph (1) of this subsection shall be paid out of the Fund.
- (h) The Board shall adopt regulations for the administration and claims procedures of the Fund.

#### §7-4A-04.

- (a) There is a Family Security Trust Fund Advisory Committee.
- (b) The Advisory Committee consists of the following five members:
  - (1) Three members of the Board, including one consumer member, appointed by the Board;
  - (2) One member designated by the Maryland State Funeral Directors Association; and
  - (3) One member designated by the Funeral Directors and Morticians Association of Maryland, Inc.
- (c) The Advisory Committee members may be, but are not required to be, licensees of the Board.
- (d) (1) Except for the initial terms of the Advisory Committee, the term of a member is 4 years.

- (2) A member continues to serve until a successor is appointed and qualifies.
- (3) The terms of the initial members shall be staggered evenly between 3 years and 4 years as the Advisory Committee shall determine at the Advisory Committee's first meeting.
- (4) A member may not serve for more than two 4--year terms.
- (e) The Advisory Committee shall elect annually a chair, vice chair, and secretary from among its members.
- (f) (1) The Advisory Committee shall meet at the call of the chair or the vice chair.
- (2) The Advisory Committee shall meet at least twice each year at the times and places that it determines.
- (g) The purpose of the Advisory Committee is to provide nonbinding counsel and advice to the Board on any Fund matters other than pending individual claim matters.
- (h) The Board shall:
  - (1) Work with the Advisory Committee in a cooperative manner; and
  - (2) Provide to the Advisory Committee, in a timely manner:
    - (i) All appropriate Fund information, other than information involving pending claim matters; and
    - (ii) Summary information about the outcome of all closed claims, including actual amounts of individual and total claim payments.
- (i) A member of the Advisory Committee:
  - (1) May not receive compensation as a member of the Advisory Committee; but
  - (2) May receive reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§7-4A-05.

- (a) Before the Board issues an initial funeral establishment license, the funeral establishment shall pay, in addition to all other applicable fees, a fee of \$375 to be credited to the Fund.
- (b) (1) Each funeral establishment shall pay \$375 per year into the Fund, until the Fund has accumulated a balance of \$1,000,000.
- (2) If, after the Fund has accumulated a balance of \$1,000,000, the amount in the Fund falls below \$1,000,000, the Board shall assess each funeral establishment an additional fee in an amount that will, over a reasonable period, return the Fund to a level of at least \$1,000,000.
- (3) The Board may not issue a renewal funeral establishment license if the funeral establishment has not paid the fee required under this subsection.

§7-4A-06.

- (a) Subject to the provisions of this subtitle, a person may recover compensation from the Fund for an actual pre-need trust fund loss that occurred on or after January 1, 2010, and is based on an act or omission as described in subsection (b) of this section.
- (b) A claim for the loss shall:
  - (1) Be based on an act or omission that occurs in the provision of funeral pre-need services by:
    - (i) A licensed mortician;

- (ii) A licensed funeral director;
  - (iii) A licensed apprentice mortician;
  - (iv) A licensed apprentice funeral director; or
  - (v) An unlicensed employee of a licensed funeral establishment;
- (2) Involve a transaction that relates to pre-need funeral planning that occurred in the State; and
- (3) Be based on an act or omission:
- (i) In which pre-need money is obtained from a person by theft, embezzlement, false pretenses, or forgery;
  - or
  - (ii) That constitutes fraud or misrepresentation.
- (c) The amount recovered for any claim against the Fund:
- (1) May not exceed the actual monetary loss suffered; and
  - (2) May not include noneconomic, consequential, or punitive damages.
- (d) A funeral establishment shall include in each sales contract that is provided by the funeral establishment a written notice to the buyer that the buyer may file a claim with the Fund.

§7-4A-07.

- (a) Each claim against the Fund shall be made in accordance with this section.
- (b) Each claim shall:
  - (1) Be in writing;
  - (2) Be made under oath;
  - (3) State the amount of loss claimed;
  - (4) State the facts on which the claim is based; and
  - (5) Be accompanied by any documentation or other evidence that supports the claim.

§7-4A-08.

- (a) The Board shall act promptly on a claim made under this subtitle.
- (b) On receipt of a claim, the Board shall:
  - (1) Forward a copy of the claim:
    - (i) To each licensee alleged to be responsible for the act or omission giving rise to the claim;
    - (ii) To each unlicensed employee alleged to be responsible for the act or omission giving rise to the claim;
    - and
    - (iii) To each funeral establishment that employs a licensee or unlicensed employee alleged to be

responsible for the act or omission giving rise to the claim; and

(2) Request from each of the persons listed in item (1) of this subsection a written response within 10 days to the allegations set forth in the claim.

(c) (1) The Board:

- (i) Shall review the claim and any response to the claim; and
- (ii) May conduct an investigation of the claim.

(2) On the basis of its review and any investigation that the Board conducts, the Board shall:

- (i) Set the matter for a hearing; or
- (ii) If the claim is frivolous, made in bad faith, or legally insufficient, dismiss the claim.

(d) At any claim hearing, the burden of proof shall be on the claimant to establish the validity of the claim.

#### §7-4A-09.

(a) The Board shall give the following persons notice of the hearing and an opportunity to participate in the hearing:

- (1) The claimant;
- (2) Each licensee alleged to be responsible for the act or omission giving rise to the claim;
- (3) Each unlicensed employee alleged to be responsible for the act or omission giving rise to the claim; and
- (4) Each funeral establishment that employs a licensee or unlicensed employee alleged to be responsible for the act or omission giving rise to the claim.

(b) The Board may not proceed with the hearing unless the records of the Board show that the Board provided each notice required under the provisions of this section and § 7-4A-08 of this subtitle.

#### §7-4A-10.

(a) If a claim against the Fund alleges that the act or omission giving rise to the claim was performed by a licensee, the Board may join the proceeding on the claim with any disciplinary proceeding against the licensee under this title arising from the same facts alleged in the claim.

(b) (1) For that part of a hearing on consolidated proceedings that relates to disciplinary action but does not relate to the Fund claim against a licensee, the claimant:

- (i) May not be a party; and
- (ii) May participate only as a witness.

(2) For that part of a hearing on consolidated proceedings that relates to the claim against the Fund, the claimant is a party.

#### §7-4A-11.

(a) The Board shall order full or partial payment of a claim by the Fund if, on the hearing, the claimant proves that the claimant has a valid claim under this subtitle.

(b) The Board may order full or partial payment by the Fund only for the actual monetary loss suffered by the claimant as a result of the claim proven by the claimant.

(c) A payment may not be made by the Fund under an order of the Board until:

(1) The expiration of the time provided under Title 10, Subtitle 2 of the State Government Article for seeking judicial review of the Board's order; or

(2) The expiration of any judicial stay of the order of the Board.

(d) The Board shall order payment of each claim due in the order in which the claim was awarded.

(e) If, at the time a payment is due, the money in the Fund is insufficient to satisfy fully the order for payment, the Board:

(1) Immediately shall pay to the claimant the amount that is available in the Fund; and

(2) When sufficient funds are available in the Fund, shall pay the claimant the balance due on the order.

§7-4A-12.

(a) After payment of a claim by the Fund, a licensee who the Board finds responsible for the act or omission that gave rise to the claim shall reimburse the Fund in full for:

(1) The amount paid by the Fund; and

(2) Interest on the amount paid by the Fund at an annual rate of 6%.

(b) Each licensee who the Board finds responsible for the act or omission that gave rise to a claim is jointly and severally liable for the claim.

(c) If a licensee does not reimburse the Fund as provided in subsection (a) of this section, the Board or the State Central Collection Unit, as assignee of the Board, may bring an action against the licensee for the amount that has not been reimbursed.

(d) The Board or the State Central Collection Unit, as assignee of the Board, shall be entitled to a judgment for the amount that the licensee has not reimbursed the Fund if the Board proves that:

(1) Payment was made by the Fund based on an act or omission for which the Board found the licensee was responsible;

(2) A period of at least 30 days has passed since payment was made by the Fund; and

(3) The licensee has not reimbursed the Fund for the amount for which the judgment is sought.

(e) (1) If a person liable for reimbursing the Fund under this section receives a demand for reimbursement and fails to reimburse the Fund, the reimbursement amount and any accrued interest or cost are a lien in favor of the State on any real property of the person if the lien is recorded and indexed as provided in this subsection.

(2) (i) The lien in favor of the State created by this subsection may not attach to specific property until the State Central Collection Unit records written notice of the lien in the office of the clerk of the court for the county in which the property subject to the lien or any part of the property is located.

(ii) The notice required under subparagraph (i) of this paragraph shall contain the name and address of the person against whose property the lien exists, the amount of the lien, a description of or reference to the property subject to the lien, and the date the Fund paid the claim giving rise to the lien.

(3) The lien in favor of the State created by this subsection does not have priority as to any specific property

over any person who is a lienholder of record at the time the notice required under paragraph (2) of this subsection is recorded.

(4) On presentation of a release of any lien in favor of the State created by this subsection, the clerk of the court in which the lien is recorded and indexed shall record and index the release and shall note in the lien docket the date the release is filed and the fact that the lien is released.

(5) The notice required under paragraph (2) of this subsection and any release filed under paragraph (4) of this subsection shall be indexed with the judgment lien records maintained by the office of the clerk of the court where the notice is recorded.

(6) The clerk may collect a reasonable fee for recording and indexing each notice of lien or release of any lien under this subsection.

(f) For the purpose of excepting to a discharge of a licensee under 11 U.S.C. § 523, the Board or the State Central Collection Unit, as assignee of the Board, is a creditor of the licensee for the amount that was paid by the Fund but that has not been reimbursed by the licensee.

§7-4A-13.

(a) If the Board orders payment by the Fund of a claim based on an act or omission for which a licensee is responsible, the Board immediately and without further proceedings shall suspend the license of the licensee.

(b) The Board may not reinstate a license that is suspended under this section until the person whose license was suspended:

(1) Repays in full:

(i) The amount paid by the Fund; and

(ii) The interest due under § 7-4A-12(a)(2) of this subtitle; and

(2) Applies to the Board for reinstatement of the license.

(c) Regardless of whether the disciplinary sanction was imposed for the same act or omission that gave rise to the claim against the Fund, the reimbursement of the Fund by a licensee does not affect any sanction imposed by the Board against a person under the disciplinary provisions of §§ 7-316 through 7-320 of this title.